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Bernard Bronner Order Denying Motion to Strike

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Fulton County Superior Court

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IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

BERNARD H. BRONNER, derivatively)
on behalf of Rainforest Production)
Holdings, Inc. and directly on behalf of) Civil Action File No.
himself,) 2014CV248023
)
Plaintiff,)
)
v.)
)
ROBERT E. HARDY, II, WILLIAM E.) Bus. Case Div. 3
PACKER, JR., and TRF)
PRODUCTIONS, LLC,)
)
Individual Defendants,)
)
and)
)
RAINFOREST PRODUCTION)
HOLDINGS, INC.)
)
Nominal Defendants.)

ORDER DENYING MOTION TO STRIKE

The above styled matter is before the Court on Defendants Robert E. Hardy, II, William E. Packer, Jr., TRF Productions, LLC, and Rainforest Production Holdings, Inc. (collectively “Defendants”) Objection and/or Motion to Strike or Exclude Plaintiff’s Untimely Responses to Motions for Summary Judgment, and Motion for Litigation Expenses (“Motion to Strike”). Therein, Defendants ask the Court to strike or exclude from consideration various filings submitted by Plaintiff Bernard H. Bronner related to pending motions for summary judgment, including Plaintiff’s: Appendix of Evidentiary Materials Submitted in Support of His Motion for Partial Summary Judgment , Memorandum of Law in Support Thereof and Statement of Material

Facts and His Oppositions to Defendants' Motions for Summary Judgment ("Appendix of Materials"); Memorandum of Law in Opposition to Counterclaimant's Motion for Partial Summary Judgment – Counterclaims; and Response to Defendants' Statement of Material Facts and Theories of Recovery/Non-Recovery in Support of Defendants' Motions for Summary Judgment. (Collectively "Plaintiff's Responses to Motions for Summary Judgment"). Specifically, Defendants argue the Court should strike, exclude, and/or decline to consider Plaintiff's Responses to Motions for Summary Judgment because Plaintiff failed to timely file those materials despite an extension granted by the Court. Having considered the Motion to Strike and the record, the Court finds as follows:

Pursuant to the parties' Consent Order to Extend Discovery which was entered on Sept. 5, 2017: discovery in this matter was extended through Feb. 2, 2018; dispositive motions were due on or before Mar. 16, 2018; and responses to any such dispositive motions were due on or before Apr. 13, 2018. On Feb. 21, 2018, Defendants filed their Motion for Summary Judgment. Plaintiff responded on Feb. 28, 2018 by filing his Motion to Compel Deposition Testimony, for Sanctions and Attorney's Fees, Motion to Extend Deadline for Dispositive Motions and Combined Memorandum of Law in Support ("Motion to Compel and Extend Deadline for Dispositive Motions"). On Mar. 1, 2018, Defendants filed a notice of intent to oppose the Motion to Compel and Extend Deadline for Dispositive Motions. On Mar. 16, 2018, Counterclaims filed their Motion for Summary Partial Judgment – Counterclaims and on Mar. 29, 2018, Defendants filed their Opposition to Plaintiff's Motion to Compel Deposition Testimony, for Sanctions, and Attorneys Fee and Motion to Extend Dispositive Motions Deadline. On Apr. 6, 2018, Plaintiff filed a reply in support of his Motion to Compel and Extend Deadline for Dispositive Motions.

On Apr. 9, 2018, the Court issued an Order on Certain Pending Motions wherein the Court, *inter alia*: deferred consideration of Defendants' Motion for Summary Judgment and Counterclaimants' Motion for Summary Partial Judgment – Counterclaims pending resolution of a discovery dispute regarding the continued deposition of Mr. Packer; granted in part Plaintiff's Motion to Compel, directing that Mr. Packer's continued deposition take place within thirty days of the Court' order; and granted in part Plaintiff's request to extend the deadline for filing dispositive motions, giving sixty days for Defendants/Counterclaimants to supplement their summary judgment motions and for Plaintiff to file his summary judgment motion and instructing that responses were due within thirty days of those filings.

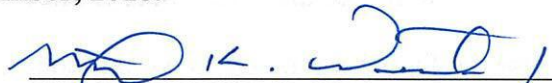
Defendants supplemented their summary judgment motion on May 14, 2018 such that Plaintiff's response was initially due by Jun. 13, 2018. However, citing a calendaring error, Plaintiff requested an extension which the Court granted, allowing him through Jun. 20, 2018 to file a response. The Court's docket reflects the following subsequent filings from Plaintiff:

- **Jun. 21, 2018 at 12:00 AM:** Plaintiff's Memorandum of Law in Opposition to Counterclaimants' Motion for Summary Partial Judgment – Counterclaims, and Plaintiff's Response to Defendants' Statement of Material Facts and Theories of Recovery/Non-Recovery in Support of Defendants' Motions for Summary Judgment;
- **Jun. 21, 2018 at 4:28 PM:** Plaintiff's Opposition to Defendants' Motion for Summary Judgment;
- **Jun. 21, 2018 at 8:45 PM:** Plaintiff's Unopposed Motion to File Under Seal (seeking to file under seal Plaintiff's Appendix of Materials); and
- **Jun. 25, 2018 at 8:53 PM:** Plaintiff's Notice of Filing [Appendix of Materials] (submitted after the Court granted Plaintiff's Unopposed Motion to File Under Seal).

Because the foregoing materials were filed after the Jun. 20, 2018 extended deadline, Defendants object, ask the Court to strike, exclude or decline to consider them and request their attorney's fees associated with the instant motion.

Having considered the Motion to Strike and the record, the Court finds Plaintiff's Memorandum of Law in Opposition to Counterclaimants' Motion for Summary Partial Judgment – Counterclaims was timely filed pursuant to the Court's Apr. 9, 2018 Order on Certain Pending Motions given that Counterclaimants did not supplement their motion following the continued deposition of Mr. Packer. Further, given the de minimus delay, the procedural history of this case, and the e-filing/technical issues averred to by Plaintiff's counsel and whereas no summary judgment hearing has yet been scheduled such that Defendants will have a full opportunity to consider and respond to Plaintiff's filings, the Court exercises its discretion to extend the response deadline and will consider Plaintiff's Jun. 21, 2018 and Jun. 25, 2018 filings. *See* O.C.G.A. § 9-11-6(b) (“When by this chapter or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time...the court for cause shown may at any time in its discretion...upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect”); Green v. Bd. of Directors of Park Cliff Unit Owners Ass'n, Inc., 279 Ga. App. 567, 568, 631 S.E.2d 769, 771 (2006); McIntosh v. McLendon, 162 Ga. App. 220, 220, 290 S.E.2d 157, 158 (1982); Suttle v. Northside Realty Assocs., Inc., 171 Ga. App. 928, 930-31, 321 S.E.2d 424, 427 (1984); Ga. Unif. Super. Ct. R. 6.2; In re: Certain Litigation in the Superior Court of Fulton County, Standing Order Regarding Electronic Filing for Civil Cases, ¶6D. Accordingly, Defendants' Motion to Strike is hereby DENIED.

SO ORDERED this 18th day of September, 2018.


JUDGE MELVIN K. WESTMORELAND
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit

Served upon registered service contacts through eFileGA:

Attorneys for Plaintiff	Attorneys for Defendants
<p>D. Tennell Lockett Travis T. Townsend, Jr. Steven Pritchett TOWNSEND & LOCKETT, LLC 1401 Peachtree Street, Suite 500 Atlanta, GA 30309 Telephone: (404) 870-8501 Facsimile: (404) 870-8502 Tennell.lockett@townsendlockett.com Travis.townsend@townsendlockett.com steven.pritchett@townsendlockett.com</p>	<p>T. Orlando Pearson Regina S. Molden THE MOLDEN LAW FIRM, LLC Peachtree Center - Harris Tower 233 Peachtree Street, N.E. Suite 1245 Atlanta, GA 30303 Direct Dial: (404) 835-1712 Main: (404) 324-4500 Fax: (404) 324-4501 rmolden@moldenlaw.com topearson@moldenlaw.com</p>